

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN R. BLUMATTE, a/k/a ROBERT ANGONA, a/k/a
JOHN BLUE,

Plaintiff,

-against-

GERARD QUINN, DONALD ROGERS, et al.,

Defendants.

**ANSWER OF DEFENDANTS
QUINN AND ROGERS TO
PLAINTIFF'S AMENDED
COMPLAINT**

07 Civ. 2944 (JSR)

JURY TRIAL DEMANDED

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Defendants Gerard Quinn ("Quinn") and Donald Rogers ("Rogers"), by their attorney Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to the amended complaint, respectfully allege, upon information and belief, as follows.

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "1" of the amended complaint.

2. Deny the allegations set forth in paragraph "2" of the amended complaint, except admit that defendants Quinn and Rogers are employed by the City of New York as New York City Police Department detectives.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "3" of the amended complaint.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "4" of the amended complaint.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "5" of the amended complaint.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “6” of the amended complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the amended complaint.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the amended complaint.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “9” of the amended complaint.

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12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the amended complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the amended complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “14” of the amended complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the amended complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “16” of the amended complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “17” of the amended complaint.

18. Deny the allegations set forth in paragraph “18” of the amended complaint, except admit that plaintiff purports to invoke the jurisdiction of the Court as stated therein.

19. Deny the allegations set forth in paragraph “19” of the amended complaint, except admit that plaintiff purports to base venue as stated therein.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “20” of the amended complaint.

21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “21” of the amended complaint.

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257. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “257” of the amended complaint.

258. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “258” of the amended complaint.

259. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “259” of the amended complaint.

260. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “260” of the amended complaint.

261. Deny the allegations set forth in paragraph “261” of the amended complaint.

262. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “262” of the amended complaint.

263. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “263” of the amended complaint.

264. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “264” of the amended complaint.

265. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “265” of the amended complaint.

266. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “266” of the amended complaint.

267. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “267” of the amended complaint.

268. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “268” of the amended complaint.

269. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “269” of the amended complaint.

270. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “270” of the amended complaint.

271. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “271” of the amended complaint.

272. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “272” of the amended complaint.

273. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “273” of the amended complaint.

274. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “274” of the amended complaint.

275. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “275” of the amended complaint.

276. Deny the allegations set forth in paragraph “276” of the amended complaint.

277. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “277” of the amended complaint.

278. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “278” of the amended complaint.

279. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “279” of the amended complaint.

280. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “280” of the amended complaint.

281. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “281” of the amended complaint.

282. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “282” of the amended complaint.

283. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “283” of the amended complaint.

284. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “284” of the amended complaint.

285. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “285” of the amended complaint.

286. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “286” of the amended complaint.

287. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “287” of the amended complaint.

288. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “288” of the amended complaint.

289. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “289” of the amended complaint.

290. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “290” of the amended complaint.

291. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “291” of the amended complaint.

292. In response to the allegations set forth in paragraph “292” of the amended complaint, defendants Quinn and Rogers repeat and reallege the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

293. Deny the allegations set forth in paragraph “293” of the amended complaint.

294. Deny the allegations set forth in paragraph “294” of the amended complaint.

295. Deny the allegations set forth in paragraph “295” of the amended complaint.

296. Deny the allegations set forth in paragraph “296” of the amended complaint.

297. Deny the allegations set forth in paragraph “297” of the amended complaint.

298. In response to the allegations set forth in paragraph “298” of the amended complaint, defendants Quinn and Rogers repeat and reallege the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

299. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “299” of the amended complaint.

300. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “300” of the amended complaint.

301. Deny the allegations set forth in paragraph “301” of the amended complaint.

302. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “302” of the amended complaint.

303. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “303” of the amended complaint.

304. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “304” of the amended complaint.

305. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “305” of the amended complaint.

306. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “306” of the amended complaint.

307. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “307” of the amended complaint.

308. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “308” of the amended complaint.

309. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “309” of the amended complaint.

310. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “310” of the amended complaint.

311. In response to the allegations set forth in paragraph “311” of the amended complaint, defendants Quinn and Rogers repeat and reallege the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

312. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “312” of the amended complaint.

313. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “313” of the amended complaint.

314. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “314” of the amended complaint.

315. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “315” of the amended complaint.

316. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “316” of the amended complaint.

317. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “317” of the amended complaint.

318. In response to the allegations set forth in paragraph “318” of the amended complaint, defendants Quinn and Rogers repeat and reallege the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

319. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “319” of the amended complaint.

320. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “320” of the amended complaint.

321. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “321” of the amended complaint.

322. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “322” of the amended complaint.

323. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “323” of the amended complaint.

324. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “324” of the amended complaint.

325. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “325” of the amended complaint.

326. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “326” of the amended complaint.

327. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “327” of the amended complaint.

328. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “328” of the amended complaint.

329. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “329” of the amended complaint.

330. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “330” of the amended complaint.

331. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “331” of the amended complaint.

332. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “332” of the amended complaint.

333. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “333” of the amended complaint.

334. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “334” of the amended complaint.

335. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “335” of the amended complaint.

336. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “336” of the amended complaint.

337. In response to the allegations set forth in paragraph “337” of the amended complaint, defendants Quinn and Rogers repeat and reallege the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

338. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “338” of the amended complaint.

339. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “339” of the amended complaint.

340. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “340” of the amended complaint.

341. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “341” of the amended complaint.

342. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “342” of the amended complaint.

343. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “343” of the amended complaint.

344. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “344” of the amended complaint.

345. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “345” of the amended complaint.

346. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “346” of the amended complaint.

347. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “347” of the amended complaint.

348. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “348” of the amended complaint.

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352. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “352” of the amended complaint.

353. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “353” of the amended complaint.

354. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “354” of the amended complaint.

355. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “355” of the amended complaint.

356. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “356” of the amended complaint.

357. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “357” of the amended complaint.

358. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “358” of the amended complaint.

359. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “359” of the amended complaint.

360. In response to the allegations set forth in paragraph “360” of the amended complaint, defendants Quinn and Rogers repeat and reallege the responses set forth in preceding paragraphs of this answer as if fully set forth herein.

361. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “361” of the amended complaint.

362. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “362” of the amended complaint.

363. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “363” of the amended complaint.

364. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “364” of the amended complaint.

365. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “365” of the amended complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

366. The amended complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

367. Defendants Quinn and Rogers have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

368. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or the culpable or negligent conduct of others and was not the proximate result of any act of defendants Quinn or Rogers.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

369. Defendants Quinn and Rogers have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

370. At all times relevant to the acts alleged in the amended complaint, defendants Quinn and Rogers acted reasonably in the proper and lawful exercise of their discretion.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

371. There was probable cause for plaintiff's arrest and prosecution.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

372. Plaintiff provoked any incident.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

373. Plaintiff has failed to comply with New York General Municipal Law § 50-e.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

374. Plaintiff's claims are barred, in part, by the applicable statute of limitations.

WHEREFORE, defendants Quinn and Rogers request judgment dismissing the amended complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 27, 2007

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants Quinn and Rogers
100 Church Street
New York, New York 10007
(212) 788-0906

By: /s/
Shawn D. Fabian (SF 4606)
Assistant Corporation Counsel
Special Federal Litigation Division

To: J. Joseph Bainton, Esq. (By ECF & First Class Mail)
Bainton McCarthy LLC
Attorneys for Plaintiff
26 Broadway, Suite 2400
New York, New York 10004-1840

DECLARATION OF SERVICE

Shawn D. Fabian declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct: On July 27, 2007, I served the annexed “**ANSWER OF DEFENDANTS QUINN AND ROGERS TO PLAINTIFF’S AMENDED COMPLAINT,**” upon J. Joseph Bainton, Esq., counsel for plaintiff, by depositing a copy of same, enclosed in a first class, postpaid properly addressed wrapper in a post office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to counsel for plaintiff:

J. Joseph Bainton, Esq.
Bainton McCarthy LLC
Attorneys for Plaintiff
26 Broadway
New York, New York 10004-1840

being the address designated by plaintiff for that purpose.

Dated: New York, New York
July 27, 2007

/s/

SHAWN D. FABIAN
ASSISTANT CORPORATION COUNSEL